

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Doug Baker,

Complainant,

v.

**PROBABLE CAUSE
ORDER**

Ken Tschumper, Ken Tschumper for
Minnesota House, and Dennis DeKeyrel,

Respondents.

The above-entitled matter came on for a probable cause hearing before Administrative Law Judge (ALJ) Richard C. Luis on October 2, 2012. This matter was convened to consider a campaign complaint filed under the Fair Campaign Practices Act by Doug Baker on September 27, 2012. The probable cause hearing was conducted by telephone conference call. The probable cause record closed at the conclusion of the hearing on Tuesday, October 2, 2012.

R. Reid LeBeau II, Attorney at Law, Jacobson Buffalo, appeared on behalf of Doug Baker (Complainant).

Respondent Ken Tschumper appeared on his own behalf without counsel and on behalf of the Ken Tschumper for Minnesota House committee. Respondent Dennis DeKeyrel appeared on his own behalf without counsel.

Based upon the record and all the proceedings in this matter, and for the reasons set forth in the attached Memorandum incorporated herein, the Administrative Law Judge makes the following:

ORDER

IT IS ORDERED THAT:

1. There is no probable cause to believe that Respondent Ken Tschumper violated Minn. Stat. § 211B.13 by knowingly receiving or accepting a prohibited corporate contribution and that allegation is DISMISSED.

2. There is probable cause to believe that Respondent Ken Tschumper for Minnesota House committee violated Minn. Stat. § 211B.13 by knowingly receiving or accepting a prohibited corporate contribution.

3. There is probable cause to believe that Respondent Dennis DeKeyrel violated Minn. Stat. § 211B.15, subd. 13, by aiding and abetting a violation of Minn. Stat. § 211B.15, subd. 2 (prohibited corporate contribution).

4. The remaining allegations in this matter are referred to the Chief Administrative Law Judge for joinder with the prior related campaign case (*Baker v. Tschumper, et. al.*, OAH Docket # 7-0320-23108-CV) pursuant to Minnesota Statutes § 211B.33, subd. 4, and for assignment to a panel of three Administrative Law Judges, pursuant to Minnesota Statutes § 211B.35.

Dated: October 5, 2012

s/Richard C. Luis
RICHARD C. LUIS
Administrative Law Judge

MEMORANDUM

Respondent Ken Tschumper is the DFL Party's endorsed candidate for Minnesota House of Representatives from District 28B.¹ Ken Tschumper for Minnesota House is the name of Mr. Tschumper's campaign committee. Respondent Dennis DeKeyrel is the Chair of Mr. Tschumper's campaign committee and the Chairman of the Fillmore County DFL Party. Mr. DeKeyrel is also the owner and president of Precision Plus, Inc., a registered Minnesota corporation.

On August 1, 2012, Mr. DeKeyrel, as Mr. Tschumper's campaign manager, went to the KFIL radio station in Preston to record a radio advertisement promoting Mr. Tschumper's campaign and to purchase a block of advertising time to broadcast the advertisement.² The radio station charged the Tschumper campaign \$224 for running the radio advertisement for four weeks. Because Mr. DeKeyrel had left his personal check book at home, he paid for the advertising time with a check drawn on Precision Plus, Inc.'s checking account.³ On the radio station's "Agreement Form for Political Candidate Advertisements," Mr. DeKeyrel represented that the broadcast time was being paid for by the "Ken Tschumper for the Minnesota House" campaign committee.⁴

¹ House District 28B includes all of Fillmore and Houston Counties.

² Complaint Ex. A; (See, *Baker v. Tschumper, et. al.*, Probable Cause Order OAH Docket 7-0320-23108-CV (Sept. 26, 2012)).

³ *Id.*

⁴ *Id.*

On August 1, 2012, Mr. DeKeyrel sent an email to Mr. Tschumper informing him that he had written a check in the amount of \$224 for the advertisements. On August 2, 2012, Mr. Tschumper sent an email to the Treasurer of his campaign committee, Sarah Goff, and told her to send Mr. DeKeyrel a check for \$224 for the KFIL radio advertisements. On August 5, 2012, Ms. Goff wrote a check for \$224 to Mr. DeKeyrel from the “Ken Tschumper for Minnesota House” campaign committee’s account. Mr. DeKeyrel deposited the check into his personal checking account on or about August 9, 2012. As of September 20, 2012, Mr. DeKeyrel had not reimbursed the \$224 to Precision Plus, Inc.⁵

On September 10, 2012, Doug Baker filed a Campaign Complaint with the Office of Administrative Hearings⁶ alleging that Respondents DeKeyrel and Precision Plus violated Minn. Stat. § 211B.15, subd. 2, by providing a corporate contribution to Mr. Tschumper’s campaign by paying for the advertising time. This Administrative Law Judge found a *prima facie* violation was presented and ordered a probable cause hearing. At the probable cause hearing in that matter, Mr. DeKeyrel stated that he had paid for the advertising with a check from his Precision Plus Inc. account because he had left his personal check book at home. Mr. DeKeyrel is the Chair of Mr. Tschumper’s campaign committee and was acting on behalf of the committee when he wrote the check for the advertisements. Mr. Tschumper testified at the probable cause hearing that he was not aware that Mr. DeKeyrel had paid for the advertising with a Precision Plus, Inc. check.

In this Complaint, filed September 27, 2012, Mr. Baker alleges that Respondents Ken Tschumper and the Ken Tschumper for Minnesota House committee violated Minn. Stat. § 211B.13 by knowingly accepting or receiving a corporate contribution prohibited under Minn. Stat. § 211B.15. The Complaint alleges further that Respondent Dennis DeKeyrel violated Minn. Stat. § 211B.15, subd. 13, by aiding and abetting a violation of Minn. Stat. § 211B.15, subd. 2.

Legal Standard

The purpose of a probable cause determination is to determine whether, given the facts disclosed by the record, it is fair and reasonable to hear the matter on the merits.⁷ If the judge is satisfied that the facts appearing in the record, including reliable hearsay, would preclude the granting of a motion for a directed verdict, a motion to dismiss for lack of probable cause should be denied.⁸ A judge’s function at a probable

⁵ *Id.*

⁶ *Baker v. Tschumper, et. al*, OAH Docket 7-0320-23108-CV.

⁷ *State v. Florence*, 239 N.W.2d 892, 902 (Minn. 1976).

⁸ *Id.* at 903. In civil cases, a motion for a directed verdict presents a question of law regarding the sufficiency of the evidence to raise a fact question. The judge must view all the evidence presented in the light most favorable to the adverse party and resolve all issues of credibility in the adverse party’s favor. See, e.g., Minn. R. Civ. P. 50.01; *LeBeau v. Buchanan*, 236 N.W.2d 789, 791 (Minn. 1975); *Midland National Bank v. Perranoski*, 299 N.W.2d 404, 409 (Minn. 1980). The standard for a directed verdict in civil cases is not significantly different from the standard for summary judgment. *Howie v. Thomas*, 514 N.W.2d 822 (Minn. App. 1994).

cause hearing does not extend to an assessment of the relative credibility of conflicting testimony. As applied to these proceedings, a probable cause hearing is not a preview or a mini-version of a hearing on the merits; its function is simply to determine whether the facts available establish a reasonable belief that the Respondent has committed a violation. At a hearing on the merits, a panel has the benefit of a more fully developed record and the ability to make credibility determinations in evaluating whether a violation has been proved, considering the record as a whole and the applicable evidentiary burdens and standards.

Fair Campaign Practices Act

Minnesota Statutes § 211B.15, subd. 2, prohibits corporations from making direct or indirect political contributions to candidates or their committees. Precision Plus, Inc. is a for-profit subchapter S corporation doing business in Minnesota. It meets the definition of “corporation” in Minn. Stat. § 211B.15, subd. 1(1), and it provided a contribution to Mr. Tschumper’s campaign by paying for Mr. Tschumper’s radio advertisements. This Administrative Law Judge has already found in the prior related complaint that there is probable cause to believe Respondents DeKeyrel and Precision Plus, Inc. violated Minn. Stat. § 211B.15’s prohibition against corporate contributions.

Minnesota Statutes § 211B.15, subd. 13, provides that an individual who “aids, abets, or advises” a violation of section 211B.15 is guilty of a gross misdemeanor.

Minnesota Statutes § 211B.13, subd. 2, provides as follows:

Subd. 2. Certain solicitations prohibited. A person may not knowingly solicit, receive, or accept any money, property, or other thing of monetary value, or a promise or pledge of these that is a disbursement prohibited by this section or section 211B.15.

Analysis

A corporation is prohibited from contributing “anything of monetary value” to a candidate or committee to promote or defeat the candidacy of an individual for election to public office. A “disbursement” is defined, in relevant part, as promising, paying, spending, contributing or lending anything of monetary value.⁹ Similarly, contribution is defined to mean “anything of monetary value that is given or loaned to a candidate or committee for a political purpose.”¹⁰ There is no requirement that the corporate contribution be intentional or knowing in order to violate Minn. Stat. § 211B.15. Instead, the statute strictly prohibits a corporation from making contributions directly or indirectly to a candidate or committee to promote the election or defeat of a candidate for office.

Based on the record presented, the Complainant has demonstrated probable cause to believe that Respondent DeKeyrel violated Minn. Stat. § 211B.15, subd. 13, by

⁹ Minn. Stat. § 211B.01, subd. 5.

¹⁰ Minn. Stat. § 211A.01, subd. 5.

aiding and abetting a violation of Minn. Stat. § 211B.15, subd. 2, when he used corporate funds to purchase radio advertisements for the Tschumper committee.

The Complainant has also established probable cause that the Tschumper for Minnesota House committee violated Minn. Stat. § 211B.13, subd. 2, by knowingly receiving or accepting a prohibited corporate contribution. Mr. DeKeyrel is the Chair of Tschumper's campaign committee and he wrote the check for the radio advertisements on his corporate account while acting in that capacity.

The Complainant has failed to put forward sufficient evidence, however, to demonstrate probable cause that Ken Tschumper knowingly received or accepted a prohibited corporate contribution. The facts presented in this case and in the September 20th Complaint demonstrate that Mr. Tschumper was unaware that Mr. DeKeyrel paid for the advertisements from his Precision Plus corporate account. The Minn. Stat. § 211B.13 allegation as against Respondent Ken Tschumper is dismissed.

The Administrative Law Judge finds that it is reasonable to require Mr. Tschumper's campaign committee (Ken Tschumper for Minnesota House) to go to hearing on the merits of the Minn. Stat. § 211B.13 allegation and Respondent Dennis DeKeyrel to go to hearing on the merits of the Minn. Stat. § 211B.15, subd. 13, allegation. This matter will be referred to the Chief Administrative Law Judge to be joined with the earlier Complaint and to be assigned to a panel of three Administrative Law Judges for hearing.

R.C.L.